



DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 230403-0091]

RIN 0605-AA59

Public Information, Freedom of Information Act and Privacy Act Regulations

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Final rule; correcting amendments.

SUMMARY: This rulemaking amends the Department of Commerce's (Department) regulations under the Freedom of Information Act (FOIA) to reflect changes related to the Department's transition to a new FOIA case management system. The Department is also correcting cross-references to its FOIA regulations and updating the contact information for the Office of Inspector General (OIG).

DATES: The rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Deputy Program Director for Departmental FOIA/PA and Open Government Operations, Office of Privacy and Open Government, Department of Commerce, 1401 Constitution Ave., NW, Mail Stop 61013, Washington, D.C. 20230, by phone at (202) 482-3842, or by email at eFOIA@doc.gov.

SUPPLEMENTARY INFORMATION:

Background

A. Implementation of New FOIA Case Management System

The Department, including the Office of the Secretary and all of its components except the U.S. Patent and Trademark Office (USPTO), currently accepts FOIA

requests and administrative appeals electronically through the FOIAonline multi-agency web-application (www.FOIAOnline.gov). The Department also accepts FOIA requests and administrative appeals via email to designated email addresses or via hard copy mail or via commercial carrier to designated physical addresses for individual components, as specified in *15 CFR Appendix A to Part 4—Freedom of Information Public Inspection Facilities and Addresses for Requests for Records Under the Freedom of Information Act and Privacy Act, and Requests for Correction or Amendment Under the Privacy Act* (Appendix A). Because the U.S. Environmental Protection Agency decided to decommission the FOIAonline.gov website effective September 30, 2023, the Department began a process to acquire and implement a successor FOIA case management system. In September 2022, the Department awarded a contract following an open solicitation process. The Department has been working diligently on the implementation of the new FOIA case management system and anticipates that it will be able to receive FOIA requests and FOIA administrative appeals by April 21, 2023, through <https://foia-pal.commerce.gov>. In the interim, requesters may continue to file FOIA requests via U.S. mail, delivery service or by email, or electronically through the FOIA.gov website at <https://www.foia.gov/>. FOIA appeals may be submitted via hard copy mail or commercial carrier or by email to the email address specified in Appendix 1 (foiaappeals@doc.gov). The Department maintains a list of contact methods on its website at https://osec.doc.gov/opog/FOIA/FOIA_Requests.html#File.

The first purpose of this rule is to delete the references to FOIAonline from the following parts of the Department's FOIA regulations (15 CFR. 4.1 et seq.): §§ 4.4, 4.6, 4.7, 4.10, § 4.11, and Appendix A. This will serve to timely inform requesters that they cannot submit FOIA requests or appeals to the Department through the

FOIAonline case management system or otherwise access their Departmental FOIA records after 5 p.m. Eastern on March 31, 2023. Beginning on April 21, 2023, new requests and administrative appeals will be accepted using the new link, as well as through the existing email and postal addresses.

B. Correcting Error in FOIA Regulations

On August 10, 2018, the Department published a final rule that revised its existing regulations under the FOIA and Privacy Act. *See* 83 FR 39588. The second purpose of this rule is to correct two typographical errors appearing in 15 CFR 4.4 regarding the cross-reference of subsections of another regulation (15 CFR 4.7) in the final rule.

C. Updating the Contact Information for FOIA Submissions to the OIG in Appendix A.

The OIG has made the following changes to its contact information in Appendix A - updated its phone number and room number and removed the fax number.

Amendments to 15 CFR 4.1-4.11 and Appendix A

The Department amends the following sections by removing the references to “FOIAonline,” and “<http://foiaonline.regulations.gov>” from the following sections: §§ 4.4(a), 4.6(e)(2), 4.7(a), 4.10(b)(1), 4.10(b)(2), 4.11(c)(2)(iv), and Appendix A.

Corrections to 15 CFR 4.4

The Department removes from 15 CFR 4.4(c)(7) the references in the last sentence of this subsection to “§ 4.7(d)” and “§ 4.7(e),” replacing them with the corrected citations to “§§ 4.7(c)(2)” and “4.7(c)(3)” respectively.

Classification

The Department finds good cause under 5 U.S.C. 553(b)(3)(B) to waive prior notice and an opportunity for public comment on this action because the amendments removing references to the FOIA case management system that is being replaced and the correcting amendments to cross-referenced sections in the final rule text are minor and non-substantive. Therefore, notice and comment are unnecessary and would be contrary to the public interest because they would delay the amendment and correction. Because this action makes no substantive changes and makes minor corrections, it does not constitute a substantive rule, and it is not subject to the requirement for a 30-day delay in effective date in 5 U.S.C. 553(d).

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(3)(B) or any other law, a Regulatory Flexibility Act analysis is not required and none has been prepared.

This regulation does not contain a collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

List of Subjects in 15 CFR Part 4

Public Information, Freedom of Information Act, Privacy Act.

Charles R. Cutshall,

*Senior Agency Official for Privacy, Chief Privacy Officer
and Director of Open Government, Office of Privacy and
Open Government.*

For the reasons stated in the preamble, the Department of Commerce amends 15 CFR Part 4 as follows:

PART 4 ----DISCLOSURE OF GOVERNMENT INFORMATION

1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

2. In § 4.4, revise paragraphs (a) and (c)(7) to read as follows:

§4.4 Requirements for making requests.

(a) *How made and addressed.* The Department has a decentralized system for responding to FOIA requests, with each component designating a FOIA office to process records from that component. All components have the capability to receive requests electronically through electronic mail (email). A request for Department records that are not customarily made available to the public as part of the Department's regular informational services (or pursuant to a user fee statute), must be in writing and shall be processed under the FOIA, regardless of whether the FOIA is mentioned in the request. Requests must include the requester's full name and a valid return address. Requesters may also include other contact information, such as an email address and a telephone number. For the quickest handling, the request (and envelope, if the request is mailed or hand delivered) should be marked "Freedom of Information Act Request." Requests may be submitted by U.S. mail, delivery service, email, or online case management system. Requests may also be submitted to some components, identified in Appendix A to this part, by facsimile. Requests should be sent to the Department component identified in Appendix A to this part that maintains those records requested, and should be sent to the addresses, email addresses, or numbers listed in Appendix A to this part or the Department's website, <http://www.doc.gov>.¹ If the proper component cannot be determined, the request should be sent to the central facility identified in Appendix A to this part. The central

¹ The USPTO, which is established as an agency of the United States within the Department, operates under its own FOIA regulations at 37 CFR part 102, subpart A. Accordingly, requests for USPTO records, and any appeals thereof, should be sent directly to the USPTO.

facility will forward the request to the component(s) it believes most likely to have the requested records. Requests will be considered received for purposes of the 20-day time limit of § 4.6 as of the date it is received by the proper component's FOIA office, but in any event not later than ten working days after the request is first received by any Department component identified in Appendix A to this part.

* * * * *

(c) * * *

(7) When a requester fails to provide sufficient detail within 30 calendar days after having been asked to reasonably describe the records sought, the component shall notify the requester in writing that the request has not been properly made, that no further action will be taken, and that the FOIA request is closed. Such a notice constitutes an adverse determination under § 4.7(c)(2) for which components shall follow the procedures for a denial letter under § 4.7(c)(3).

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4. In § 4.6, revise (e)(2) to read as follows:

§4.6 Time limits and expedited processing.

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(e) * * *

(2) A component using multi-track processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. A component doing so shall contact the requester by telephone, email, letter, or online FOIA case management system, whichever is the most efficient in each case.

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5. In § 4.7, revise paragraph (a) to read as follows:

§4.7 Responses to requests.

(a) *Acknowledgment of requests.* Upon receipt of a request, a component ordinarily shall

send an acknowledgement to the requester which shall provide an assigned tracking request number for further reference and, if necessary, confirm whether the requester is willing to pay fees. A component must send this acknowledgment if the request will take longer than ten working days to process. In most cases, the acknowledgment email, generated by the FOIA electronic case management system, that is sent to requesters who provide an email address will suffice for this requirement.

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6. In 4.10, revise paragraph (b) to read as follows:

§ 4.10 Appeals from initial determinations or untimely delay.

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(b)(1) Appeals, other than appeals from requests made to the Office of Inspector General, shall be decided by the Assistant General Counsel for Employment, Litigation, and Information (AGC-ELI). Written appeals should be addressed to the Assistant General Counsel for Employment, Litigation, and Information, at the U.S. Department of Commerce, Office of the General Counsel, Room 5896, 1401 Constitution Avenue NW, Washington, DC 20230. For a written appeal, both the letter and the appeal envelope should be clearly marked "Freedom of Information Act Appeal." Appeals may also be submitted electronically by email to FOIAAppeals@doc.gov or through the online case management system. In all cases, the appeal (written or electronic) should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided. Upon receipt of an appeal, the AGC-ELI ordinarily shall send an acknowledgement letter to the requester which shall confirm receipt of the requester's appeal.

(2) Appeals of initial and untimely determinations by the OIG shall be decided by the Counsel to the Inspector General, except that appeals of records requests that were initially denied by the Counsel to the Inspector General shall be decided by the Deputy Inspector General. Written appeals should be addressed to the Counsel to the Inspector General, or the Deputy Inspector General if the records were initially denied by the Counsel to the Inspector General. The address of both is: U.S. Department of Commerce, Office of the Inspector General, Office of Counsel, Room 7898C, 1401 Constitution Avenue NW, Washington, DC 20230. For a written appeal, both the letter and the appeal envelope should be clearly marked "Freedom of Information Act Appeal." Appeals may also be submitted electronically by email to FOIA@oig.doc.gov or through the online case management system. In all cases, the appeal (written or electronic) should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided. Upon receipt of an appeal, the Counsel to the Inspector General, or the Deputy Inspector General if the records were initially denied by the Counsel to the Inspector General, ordinarily shall send an acknowledgement letter to the requester which shall confirm receipt of the requester's appeal.

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7. In § 4.11, revise paragraph (c)(2)(iv)(B) to read as follows:

§4.11 Fees.

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(c) * * *

(2) * * *(iv) * * *

Category	Chargeable Fees
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(B) Other reproduction (e.g., converting paper into an electronic format (e.g., scanning), computer disk or printout, or other electronically-formatted reproduction (e.g., uploading records made available to the requester)).	Actual direct cost, including operator time, using the hourly rate from Table 1, of the employee involved.

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8. In appendix A to part 4, revise paragraphs (1) through (12) to read as follows:

Appendix A to Part 4—Freedom of Information Public Inspection Facilities, and Addresses for Requests for Records Under the Freedom of Information Act and Privacy Act, and Requests for Correction or Amendment Under the Privacy Act

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(1) U.S. Department of Commerce, Office of Privacy and Open Government, Departmental FOIA Office, 14th and Constitution Avenue NW., Room H61025, Washington, DC 20230; Phone: (202) 482-3258; Fax: (202) 482-0827; Email: eFOIA@doc.gov. The Department maintains a list of contact methods on its website at https://osec.doc.gov/opog/FOIA/FOIA_Requests.html#File. This component maintains an online Electronic FOIA Library through the Department's Web site, <http://www.doc.gov>. This online Electronic FOIA Library serves the Office of the Secretary, all other components of the Department not identified below, and those components identified below that do not have separate online Electronic FOIA Libraries.

(2) Bureau of the Census, Policy Coordination Office, U.S. Department of Commerce, Room 8H027, 4600 Silver Hill Road, Suitland, Maryland 20233; Phone: (301) 763-6440; Fax: (301) 763-6239 (ATTN.: FOIA Office); Email: census.foia@census.gov. This component maintains a separate online Electronic FOIA Library through its Website, <http://www.census.gov>.

(3) Bureau of Economic Analysis, Office of the Under Secretary for Economic Affairs, U.S. Department of Commerce, Bureau of Economic Analysis, Communications Division, Mail Stop BE – 64, Room 8K114F, Washington, DC 20230, Phone: 301-278-9798, Email: FOIA@bea.gov.

(4) Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room H6622, Washington, DC 20230; Phone: (202) 482-0953; Fax: (202) 482-0326; Email: foiarequest@bis.doc.gov. This component maintains a separate online Electronic FOIA Library through its Web site, <http://www.bis.doc.gov>.

(5) Economic Development Administration, Office of the Chief Counsel, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 72023, Washington, DC 20230; Phone:(202) 482-3085; Fax: (202) 482-5671. This component maintains a separate online Electronic FOIA Library through its website, <http://www.eda.gov>. The following Regional Economic Development Administration (EDA) offices do not maintain separate online Electronic FOIA Libraries.

(i) Atlanta Regional Office, EDA, U.S. Department of Commerce, 401 West Peachtree Street NW., Suite 1820, Atlanta, Georgia 30308; Phone: (404) 730-3006.

(ii) Austin Regional Office, EDA, U.S. Department of Commerce, 504 Lavaca Street, Suite 1100, Austin, Texas 78701; Phone: (512) 381-8165.

(iii) Chicago Regional Office, EDA, U.S. Department of Commerce, 111 North Canal Street, Suite 855, Chicago, Illinois 60606; Phone: (312) 353-8143.

(iv) Denver Regional Office, EDA, U.S. Department of Commerce, 410 17th Street, Suite 250, Denver, Colorado 80202; Phone: (303) 844-4404.

(v) Philadelphia Regional Office, EDA, U.S. Department of Commerce, Robert N.C. Nix Federal Building, 900 Market Street, Room 602, Philadelphia, Pennsylvania 19107, Phone: (215) 597-4603.

(vi) Seattle Regional Office, EDA, U.S. Department of Commerce, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174; Phone: (206) 220-7663.

(6) International Trade Administration, Office of Strategic Resources, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 40003, Washington, DC 20230; Phone:(202) 482-7937; Fax: (202) 482-1584; Email: FOIA@trade.gov. This component does not maintain a separate online Electronic FOIA Library.

(7) Minority Business Development Agency, Office of Administration and Employee Support Services, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 5092, Washington, DC 20230; Phone: (202) 482-2419; Fax: (202) 482-2500; Email: FOIA@mbda.gov. This component maintains a separate online Electronic FOIA Library through its Web site, <http://www.mbda.gov>.

(8) National Institute of Standards and Technology, Management and Organization Office, U.S. Department of Commerce, 100 Bureau Drive, Room 1710, Gaithersburg, Maryland 20899-1710; Phone: (301) 975-4054; Fax: (301) 975-5301; Email: FOIA@nist.gov. This component maintains a separate public inspection facility at the Administration Building, Gaithersburg, Maryland. Please call (301) 975-4054 for

inspection facility directions and hours. This component does not maintain a separate online Electronic FOIA Library.

(9) National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1315 East-West Highway (SSMC3), Room 9719, Silver Spring, Maryland 20910; Phone: (301) 628-5658; Fax: (301) 713-1169; Email: FOIA@noaa.gov. This component maintains a separate online Electronic FOIA Library through its Web site, <http://www.noaa.gov>.

(10) National Technical Information Service, Office of the Chief Information Officer, U.S. Department of Commerce, 5301 Shawnee Road, Room 227, Alexandria, Virginia 22312; Phone: (703) 605-6710; Fax: (703) 605-6764. This component maintains a separate online Electronic FOIA Library through its Web site, <http://www.ntis.gov>.

(11) National Telecommunications and Information Administration, Office of the Chief Counsel, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 4713, Washington, DC 20230; Phone: (202) 482-1816; Fax: (202) 501-8013; Email: eFOIA@NTIA.doc.gov. This component does not maintain a separate online Electronic FOIA Library.

(12) Office of Inspector General, FOIA and Records Management Specialist, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 7898C, Washington, DC 20230; Phone: (202) 794-8066; Email: FOIA@oig.doc.gov. This component maintains a separate online Electronic FOIA Library through its Web site, <http://www.oig.doc.gov>.